

DRAFT Regulations for HCBS Telehealth Incorporating Comments from Stakeholders 11/2/20

8.6## TELEHEALTH DELIVERY OF HOME AND COMMUNITY-BASED SERVICES

8.6##.A. DEFINITIONS

1. Assessment means a comprehensive evaluation with the individual seeking services and appropriate collaterals (such as family members, advocates, friends, and/or caregivers), chosen by the individual, conducted by the case manager, with supporting diagnostic information from the individual's medical provider to determine the individual's level of functioning, service needs, available resources, and potential funding resources.
2. Case Management means the assessment of an individual seeking or receiving long-term services and supports' needs, the development and implementation of a Support Plan for such individual, referral and related activities, the coordination and monitoring of long-term service delivery, the evaluation of service effectiveness and the periodic reassessment of such individual's needs.
3. Case Management Agency (CMA) means a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community-Based Services waivers pursuant to Section 25.5-10-209.5, C.R.S. and pursuant to a provider participation agreement with the state department.
4. Community Centered Board (CCB) means a private corporation, for profit or not for profit, which when designated pursuant to Section 27-10.5-105, C.R.S., provides case management services to Members with developmental disabilities, is authorized to determine eligibility of such Members within a specified geographical area, serves as the single point of entry for Members to receive services and supports under Section 27-10.5-101, C.R.S. et seq , and provides authorized services and supports to such Members either directly or by purchasing such services and supports from service agencies.
5. Department means the Department of Health Care Policy and Financing.
6. Home And Community-Based Services (HCBS) means services and supports authorized through a 1915(c) waiver of the Social Security Act and provided in community settings to a Member who requires a level of institutional care that would otherwise be provided in an institutional setting.
7. Home and Community-Based Services Telehealth (HCBS Telehealth) is a method of service delivery of those HCBS services listed at 8.6##.
8. Medicaid State Plan means the federally approved document that specifies the eligibility groups that a state serves through its Medicaid program, the benefits that the state covers, and how the state addresses additional federal Medicaid statutory requirements concerning the operation of its Medicaid program.
9. Member means an individual who meets long-term services and support eligibility requirements and has been approved for and agreed to receive Home and Community-Based Services (HCBS).has met long term care (LTC) eligibility requirements, is enrolled in and chooses to receive LTC services, and receives LTC services.

Commented [1]: Have removed all defined terms not used in this section.
Have updated Assessment, Case Management, Case Management Agency and Support Planning to reflect up to date definitions as approved by the MSB in October 2020.
Have removed "Clinical" from definitions and use when describing Telehealth for HCBS - per feedback received 11/2/20.
Have changed "distance" to "different" in the Telehealth definition - per feedback received 11/2/20.

10. Prior Authorization Request (PAR) means the Department prescribed form to authorize the reimbursement for services.
11. Support Planning means the process of working with the individual receiving services and people chosen by the individual to identify goals, needed services, individual choices and preferences, and appropriate service providers based on the individual seeking or receiving services' assessment and knowledge of the individual and of community resources. Support planning informs the individual seeking services of his or her rights and responsibilities.
12. Telehealth is the broad use of technologies to provide services and supports through HCBS waivers, when the member is in a different location from the provider.
13. Waiver Service means optional services defined in the current federally approved waiver documents and do not include Medicaid State Plan benefits.

8.6##.B. INCLUSIONS

1. HCBS Telehealth may be used to deliver ~~a broad range of non-clinical~~ support through the following authorized HCBS waiver services:
 - a. Adult Day Services - Basic, Tier 1; defined at Section 8.491;
 - b. Adult Day Services - Brain Injury, Tier 1; defined at Section 8.515.70;
 - c. Behavioral Management and Education; defined at Section 8.516.40;
 - d. Behavioral Services - Behavioral Consultation; defined in Sections 8.500.5.A.1, 8.500.94.2, and 8.503.4.A.3;
 - e. Behavioral Services - Behavioral Counseling, Group, defined in Sections 8.500.5.A.1, 8.500.94.2, and 8.503.4.A.3;
 - f. Behavioral Services - Behavioral Counseling, Individual, defined in Sections 8.500.5.A.1, 8.500.94.2, and 8.503.4.A.3;
 - g. Behavioral Services - Behavioral Plan Assessment; defined in Sections 8.500.5.A.1, 8.500.94.2, and 8.503.4.A.3;
 - h. Bereavement Counseling; defined at Section 8.504.1;
 - i. Community Connector; defined at Section 8.503.4;
 - j. Day Habilitation; defined at Section 8.500.5.B.2;
 - k. Expressive Therapy - Art and Play Therapy, Group; defined at Section 8.504.1;
 - l. Expressive Therapy - Art and Play Therapy, Individual; defined at Section 8.504.1;
 - m. Expressive Therapy - Music Therapy, Group; defined at Section 8.504.1;
 - n. Expressive Therapy - Music Therapy, Individual; defined at Section 8.504.1;
 - o. Independent Living Skills Training; defined at Section 8.516.10;

Commented [2]: Have removed "a broad range of non-clinical" when referencing support to be provided through Telehealth at 1 - per stakeholder feedback received 11/2/20.

- p. Mental Health Counseling, Family; defined at Section 8.516.50;
 - q. Mental Health Counseling, Group; defined at Section 8.516.50;
 - r. Mental Health Counseling, Individual; defined at Section 8.516.50;
 - s. Mentorship; defined at Section 8.500.94.7;
 - t. Movement Therapy; defined in Sections 8.500.94.A.11 and 8.503.4.9;
 - u. Palliative Supportive Care - Care Coordination; defined at Section 8.504.1;
 - v. Substance Abuse Counseling, Family; defined at Section 8.516.60;
 - w. Substance Abuse Counseling, Individual; defined at Section 8.516.60;
 - x. Supported Employment - Job Coaching, Individual, defined in Sections 8.500.5A.7 and 8.500.94.A.14;
 - y. Supported Employment - Job Development, Levels 1-6, Individual, defined in Sections 8.500.5A.7 and 8.500.94.A.14;
 - z. Transition Services - Life Skills Training; defined at Section 8.553.1;
 - aa. Transition Services - Peer Mentorship; defined at Section 8.553.1;
 - bb. Therapeutic Life Limiting Illness Support, Family; defined at Section 8.504.1;
 - cc. Therapeutic Life Limiting Illness Support, Group; defined at Section 8.504.1; and
 - dd. Therapeutic Life Limiting Illness Support, Individual; defined at Section 8.504.1.
2. For the four services listed below, HCBS Telehealth is limited to delivering only consultation:
- a. Adaptive Therapeutic Recreational Fees and Equipment, defined at Section 8.503.4.1;
 - b. Assistive Technology; defined in Sections 8.500.94.A.1 and 8.503.40.A.2;
 - c. Home Modification and Adaptation; defined in Sections 8.493, 8.500.94.A.5, and 8.503.40.A.5; and
 - d. Vehicle Modifications, defined in Sections 8.500.94.A.15 and 8.503.40.A.12.

8.6##.C. LIMITATIONS

1. HCBS Telehealth is subject to the limitations of the respective service it supports as referenced in this rule at Section 8.6##.B.
2. HCBS Telehealth is not a duplication of Health First Colorado Telehealth or Telemedicine services.

3. HCBS Telehealth excludes any service not listed in this rule at Section 8.6##.B.
4. HCBS Telehealth is not an available delivery method of those services defined under C.R.S. 25.5-5-320 (7).

8.6##.D. PROVIDER REQUIREMENTS

1. ~~Eligible providers include home health agencies or county health departments who are enrolled as Colorado Medicaid providers and with capable system equipment, subject to those requirements defined in the waivers and Health First Colorado State Plan.~~
2. HCBS waiver providers that choose to use HCBS Telehealth shall develop and distribute a written HCBS Telehealth Policy which at a minimum shall include the following: shall give members a written that includes the following language:
 - a. The member may refuse telehealth delivery at any time without affecting the member's right to any future services and without risking the loss or withdrawal of any service to which the member would otherwise be entitled;
 - b. All applicable confidentiality protections shall apply to the services;
 - c. The member shall have access to all medical information resulting from the services, under CO Revised Statutes 25.5-5-320.
 - d. HCBS waiver providers shall maintain a copy of the HCBS Telehealth Policy signed by the Member in their records.
3. HCBS waiver providers must have a written policy for the utilization of HCBS Telehealth use with Members who require translation, or have limited visual and/ or auditory capabilities.
4. HCBS waiver providers shall ensure the use of HCBS Telehealth is the choice of the Member. The HCBS waiver provider shall maintain a consent form for the use of HCBS Telehealth in the Member's record.
5. The HCBS waiver provider shall complete an assessment of Member and caregiver prior to using HCBS telehealth services that identifies a Member's ability to participate and outlines any accommodations needed while utilizing HCBS Telehealth.
6. HCBS waiver providers must comply with all confidentiality procedures and private payer requirements listed at CO Revised Statutes 10-16-123.
7. HCBS waiver providers must be able to use a technology platform that allows real-time interaction which may include audio, visual and/ or tactile technologies.
8. HCBS waiver providers shall not use HCBS Telehealth to treat a Member's emergency needs.
9. HCBS waiver providers shall use a HIPAA compliant platform meeting all privacy requirements.
10. HCBS waiver providers shall have a policy that outlines a contingency plan for service delivery if technology options fail.

8.6##.E. CASE MANAGEMENT REQUIREMENTS

Commented [3]: Have removed inaccurate provider description - per stakeholder feedback received on 11/2/20.
Have edited 2. based on feedback received from CDPHE.
Will need legal to provide guidance on "translation" as they approve rules - per feedback received from stakeholders 11/2/20.

Commented [4]: Check with legal team.

Commented [5]: Have removed limitations of units outlined in regulation - per stakeholder feedback received 11/2/20.
Have emphasized the role of case management in ensuring use of HCBS Telehealth is the choice of the member identified during the Support Planning Process.
Have included language at 3. that strengthens the case management responsibility to address any concerns with utilization.

1. Members ~~s eligible~~Eligible members to use HCBS Telehealth are those enrolled in the waivers and services as defined in this rule at Section 8.6##.B.
2. Case Management shall ensure the use of HCBS Telehealth is the choice of the Member through the Support Planning process.
3. Through the Support Planning Process, Case Management shall identify and address the benefits and detriments to Members choosing to use HCBS Telehealth for service delivery.
4. HCBS Telehealth delivery must be prior authorized and documented in the Member's support plan.
- ~~5. Case Managers shall ensure HCBS Telehealth is allocated no more than half of the authorized units of any HCBS waiver service as listed in this rule at Section 8.6##.B.~~
 - ~~a. There may be an exception for those clients who for reasons of medical necessity need to distance themselves during periods of illness or risk of illness from being around others.~~
- ~~b.5. Medical necessity for additional telehealth use shall be documented by a medical professional with knowledge of the client's needs.~~
6. Telehealth as a service delivery method for authorized HCBS waiver services, shall not interfere with any client rights or be used as any part of a Rights Modification or Suspension plan.

8.6##.F. REIMBURSEMENT

1. HCBS Telehealth does not include reimbursement for the purchase or installation of telehealth equipment or technologies.
2. HCBS Telehealth does not change provider limitations to collect copays or no show payments from Members.
3. HCBS waiver service providers utilizing Telehealth shall follow all billing policies and procedures as outlined in the Department's current waiver billing manuals and rates/fees schedules.

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